

TITLE 2. ADMINISTRATION**CHAPTER 16. OFFICE OF THE OMBUDSMAN
CITIZENS' AIDE**

(Authority: A.R.S. § 41-1376 et seq.)

*Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-1).**Editor's Note: This Chapter contains rules which were adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to Laws 1995, Ch. 281, Section 5. Exemption from A.R.S. Title 41, Chapter 6 means that the Office of the Ombudsman did not submit these rules to the Governor's Regulatory Review Council for review; the Office did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the Office was not required to hold public hearings on these rules. According to Laws 1995, Ch. 281, Section 5, the Office of Ombudsman-Citizens' Aide is exempt from the requirements of A.R.S. Title 41, Chapter 6 until July 1, 1997. Because this Chapter contains rules which are exempt from the regular rulemaking process, the Chapter is being printed on blue paper.***ARTICLE 1. GENERAL PROVISIONS***Article 1, consisting of Section R2-16-101, adopted effective October 30, 1996 (Supp. 96-4).*Section
R2-16-101. Definitions**ARTICLE 2. HANDLING CONFIDENTIAL MATERIAL***Article 2, consisting of Sections R2-16-201 through R2-16-210, adopted effective October 30, 1996 (Supp. 96-4).*Section
R2-16-201. Protecting the Identity of a Complainant or Witness
R2-16-202. Expired
R2-16-203. Requirement to Close Case Before Violating Confidentiality
R2-16-204. Expired
R2-16-205. Protecting Confidential Agency Information
R2-16-206. Expired
R2-16-207. Expired
R2-16-208. Returning a Confidential Document to a Complainant
R2-16-209. Prohibition Against Discussing Open Complaint Investigations
R2-16-210. Summaries of Closed Cases**ARTICLE 3. RECEIVING AND PROCESSING
COMPLAINTS***Article 3, consisting of Sections R2-16-301 through R2-16-306, adopted effective October 30, 1996 (Supp. 96-4).*Section
R2-16-301. Exhausting Reasonable Alternatives Within the Agency
R2-16-302. Inmate Complaints
R2-16-303. Resolution Prior to Investigation
R2-16-304. Anonymous Complaints
R2-16-305. Filing Complaints
R2-16-306. Complaints Alleging Employee Misconduct**ARTICLE 4. CONDUCTING INVESTIGATIONS***Article 4, consisting of Sections R2-16-401 through R2-16-405, adopted effective October 30, 1996 (Supp. 96-4).*Section
R2-16-401. Notice
R2-16-402. Expired
R2-16-403. Closing Cases
R2-16-404. Findings
R2-16-405. Recommendations**ARTICLE 5. ACTIONS AFTER AN INVESTIGATION***Article 5, consisting of Sections R2-16-501 through R2-16-503, adopted effective October 30, 1996 (Supp. 96-4).*Section
R2-16-501. Preliminary Report
R2-16-502. Final Report
R2-16-503. Advising the Complainant**ARTICLE 1. GENERAL PROVISIONS****R2-16-101. Definitions:**

1. "Complainant" means a person who files a complaint with the Office.
2. "Confidential information" means oral or written information, including a record, for which restricted access is required by Federal or Arizona law. Confidential information also includes identifying personal information a complainant or witness has requested not be disclosed.
3. "Document" means a paper or electronic: record, memorandum, form, book, letter, file, drawing, map, or plat.
4. "Hearing" means an investigative tool used to receive sworn testimony or to take a deposition.
5. "Office" means the Office of the Ombudsman-Citizens' Aide.
6. "Ombudsman-citizens' aide" means the person appointed to the position of ombudsman-citizens' aide under the provisions of A.R.S. § 41-1373.
7. "Photograph" means a paper or electronic photographic representation, photographic file, motion picture, video tape, microfilm, or microphotograph.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).

ARTICLE 2. HANDLING CONFIDENTIAL MATERIAL**R2-16-201. Protecting the Identity of a Complainant or Witness**

When a complainant or witness requests that their identity be protected, the Office shall not release information that reveals the person's identity to an agency, the public, or anyone else, without the person's permission.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).

R2-16-202. Expired**Historical Note**

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-203. Requirement to Close Case Before Violating Confidentiality

The Office shall close an investigation if it cannot proceed further without revealing the identity of a complainant who has requested confidentiality. Before closing the investigation for this reason, the Office shall ask the complainant for permission to release identifying information.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).

R2-16-204. Expired**Historical Note**

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-205. Protecting Confidential Agency Information

The Office shall give confidential information received from an agency the same degree of protection by the Office as provided by the agency itself. The Office shall not release confidential agency information to the complainant, or any other person, without the agency's prior authorization, unless ordered by a court or other lawful authority.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).

R2-16-206. Expired**Historical Note**

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-207. Expired**Historical Note**

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-208. Returning a Confidential Document to a Complainant

The Office shall return a confidential document received from a complainant only to the complainant, unless the complainant provides written authorization for release of the document to a 3rd party or the Office determines that the document was not lawfully in the possession of the complainant.

Historical Note

Adopted effective October 30, 1996 (Supp. 96-4).

R2-16-209. Prohibition Against Discussing Open Complaint Investigations

The Office shall not discuss open complaint investigations of the Office with the general public or the media.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).

R2-16-210. Summaries of Closed Cases

The Office shall make available to the public a summary of a closed case if the Office determines that the summary will assist in the management of a state government program, to respond to an inquiry about the performance of a state program, or to inform the public about the activity and performance of the Office. The summary shall not disclose identifying information about a complainant or witness whose identity is protected, confidential investigator notes, or confidential information received from an agency.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).

ARTICLE 3. RECEIVING AND PROCESSING COMPLAINTS**R2-16-301. Exhausting Reasonable Alternatives Within the Agency**

- A. The Office shall make inquiry of the complainant and the agency to determine that the complainant has exhausted all reasonable alternatives to resolve a complaint within the agency before initiating an investigation.
- B. If the complainant has not made a reasonable effort to resolve the complaint within the agency, the Office shall refer the complainant to the appropriate person or office within the agency and provide the complainant information about available steps to resolve the complaint.
- C. The office shall defer action in a matter that is being litigated in the courts or is the subject of a current formal administrative procedure unless the ombudsman-citizens' aide determines that immediate investigation is necessary to protect the public health, safety, or welfare.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).

R2-16-302. Inmate Complaints

In accordance with A.R.S. § 41-1377, the Office shall refuse complaints filed by a person in the custody of the Department of Corrections. This refusal shall include complaints filed by another person on behalf of an inmate, or concerning a rule or substantive policy statement concerning inmates.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).

R2-16-303. Resolution Without Investigation

If a complaint can be resolved quickly by mutual agreement, the Office shall attempt to resolve the complaint informally, without resorting to an investigation.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).

R2-16-304. Anonymous Complaints

The Office shall decline to investigate anonymous complaints unless facts of the matter are compelling and can be reasonably independently verified.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).

R2-16-305. Filing Complaints

- A. A complaint against a state agency shall be filed with the Office in writing, in person, by telephone, by electronic facsimile, or by electronic mail.
- B. A complaint that alleges breach of duty, misconduct, or discourtesy by an officer or employee of an agency shall be filed with the Office in writing and signed by the complainant.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).

R2-16-306. Complaints Alleging Employee Misconduct

- A. Before investigating an allegation of misconduct by a state employee, the Office shall provide written notice of the pending investigation to the employee and the chief executive officer of the employee's agency.
- B. If an investigation of an allegation of misconduct by a state employee results in a preliminary report that contains an adverse opinion or recommendation, the Office shall consult with the employee about the report before submitting the report to the agency and shall include the employee's written response, if any, with the preliminary report that is forwarded to the agency.
 1. This preliminary consultation shall be confidential and shall not be publicly disclosed.
 2. The employee shall have 15 working days to respond to the preliminary report, unless the ombudsman - citizens' aide believes a delay will cause significant harm or damage.
 3. An employee may request an extension to the time in which to respond to a preliminary report for a compelling reason. The Office shall grant the request unless the ombudsman-citizens' aide believes an extension would cause significant harm or damage.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).

ARTICLE 4. CONDUCTING INVESTIGATIONS**R2-16-401. Notice**

When exercising rights of access under the provisions of A.R.S. § 41-1378, whenever possible, and not deemed to compromise the effectiveness of an Office investigation, at least 10 days prior notice shall be given by the Office to the agency concerning information needs, the intent to conduct interviews, or requirements to view necessary records. An agency may request an extension to this period for a compelling reason. The ombudsman shall grant a request for extension unless the ombudsman-citizens' aide believes a delay would cause significant harm or damage.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).

R2-16-402. Expired**Historical Note**

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 1834, effective February 28, 2002 (Supp. 02-1).

R2-16-403. Closing Cases

The Office may close a case for the following reasons:

1. *Discontinued.* The ombudsman-citizens' aide determines that an investigation should be terminated before the investigation is completed because:
 - a. Disclosure of the complainant's identity is necessary to enable full investigation and the complainant refuses to allow the disclosure;
 - b. Information or a record is requested from the complainant and the complainant fails to produce the information or record within the time specified by the Office;
 - c. The complainant withdraws the complaint;
 - d. The complaint relates to a matter that has become the subject of an administrative or judicial proceeding;
 - e. The Office forwards a complaint to an appropriate prosecutor because it involves possible criminal activity; or
 - f. The ombudsman-citizens' aide determines there is other good cause not to proceed with an investigation.
2. *Closed - Not Substantiated.* The ombudsman-citizens' aide determines that the agency performed appropriately or is not able to substantiate that the agency performed inappropriately.
3. *Closed - Complaint Resolved (before preliminary report).* The ombudsman-citizens' aide determines that the complaint has merit, either wholly or in part, and, before a preliminary report is issued, the agency agrees to provide a remedy that is acceptable to the agency and ombudsman.
4. *Closed - Complaint Resolved (after preliminary report).* The ombudsman - citizens' aide determines that the complaint has merit, wholly or in part, and, after a preliminary report is issued, the agency agrees to provide remedy that is acceptable to the agency and ombudsman.
5. *Closed - Complaint Unresolved.* The ombudsman - citizens' aide determines that the complaint has merit, wholly or in part, and the agency does not accept the recommendations of the ombudsman - citizens' aide.
6. *Other.* A case is closed for a reason that does not meet 1 of the other criteria for closure.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).

R2-16-404. Findings

The Office shall refer to 1 of the following findings in an investigative report:

1. *Justified* - The investigation establishes that the administrative act did occur and the complainant's criticism of the administrative act is valid.
2. *Partially justified* -
 - a. In a complaint having multiple allegations, the investigation establishes that at least 1 allegation is

- justified and at least 1 allegation is not justified or indeterminate; or
- b. The investigation establishes there is shared fault between the complainant and agency.
3. *Not justified* - The investigation establishes that:
 - a. The administrative act did not occur; or
 - b. The administrative act occurred, but the complainant's criticism of the administrative act is not valid.
 4. *Indeterminate* - The investigation does not provide sufficient evidence for the Office to determine conclusively:
 - a. Whether the administrative act occurred; or
 - b. If the administrative act occurred, whether the complainant's criticism of the administrative act is valid.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).

R2-16-405. Recommendations

- A. In accordance with A.R.S. §§ 41-1376 and 41-1379, the Office shall recommend a resolution to a complaint when a completed investigation results in a finding of "justified" or "partially justified."
- B. The Office shall not recommend a specific employee disciplinary action to be imposed.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).

ARTICLE 5. INCORPORATING AGENCY RESPONSES INTO REPORTS AND RECOMMENDATIONS

R2-16-501. Preliminary Report

- A. Before issuing an opinion or recommendation, the Office shall consult with the agency and send a confidential preliminary report to the agency.
- B. In accordance with A.R.S. § 41-1379, the Office or affected agency may share a preliminary report with other state officials only if it is necessary to resolve the complaint, but shall not publicly disclose the contents of the preliminary report.
- C. An agency may seek modification of an opinion or recommendation presented in the preliminary report by submitting a written request within 15 working days of the date of receipt of the report.
- D. An agency may request, for a compelling reason, an extension to the time in which to respond. The Office shall grant an agency's request for extension, unless the ombudsman-citizens' aide believes an extension would cause significant harm or damage.

- E. If an agency seeks modification of an opinion or recommendation, the Office shall consider the agency's request before it prepares the final report and shall notify the agency of the acceptance or rejection of that request within 15 working days of receiving the request.
- F. If an agency does not request modification, the preliminary report becomes the final report 15 working days after the date the agency received the preliminary report.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).

R2-16-502. Final Report

- A. After the Office receives an agency's response, if any, to a preliminary report and makes accepted modifications to the preliminary report, or if no timely response is filed, the Office shall send the final report to the chief executive officer of the affected agency.
- B. If requested to respond to a final report, the affected agency shall respond in writing within 20 working days from the date of receipt of the final report. The response shall advise the Office of the agency's decision to accept or reject a recommendation. If the agency accepts a recommendation, the response shall specify a date by which the recommendation will be implemented.
- C. If the ombudsman-citizens' aide determines that an early response to a final report is necessary to protect the public health, safety or welfare, the Office shall require an agency to respond on a date sooner than 20 working days. Additionally, the ombudsman - citizens' aide may extend a response period for good cause at the request of an agency.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).

R2-16-503. Advising the Complainant

- A. The Office shall provide a final response to the complainant.
 1. If a complaint is resolved through formal procedures, the Office shall respond in writing;
 2. If a complaint is resolved through informal procedures, the Office shall respond by either telephone or in writing.
- B. Before releasing a final report to any person not authorized to receive confidential information, the Office shall purge the report of any confidential information.

Historical Note

Adopted under an exemption from the Administrative Procedure Act pursuant to Laws 1995, Ch. 281, Section 5; effective October 30, 1996 (Supp. 96-4).